

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Samuel Exens,

Plaintiff,

vs.

Simon Major, et al.,

Defendants.

Civil Action No. 6:09-2436-RBH-WMC

REPORT OF MAGISTRATE JUDGE

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. By order filed September 21, 2009, the plaintiff was given an opportunity to bring the case into proper form, which he did, and on September 28, 2009, the Clerk was directed to authorize service. A copy of the September 28th order was mailed to the plaintiff, addressed to "Samuel Exens, 1322, SLRDC, 1250 Winkles Road, Sumter, SC 29150." On October 13, 2009, the order was returned with the envelope stamped "Return to Sender, Refused, Unable to Forward" and "Refused by Institution," with a handwritten note stating "Not Here."

On November 20, 2009, the defendants filed a motion to dismiss for lack of prosecution. On November 23, 2009, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), an order was mailed to the plaintiff at the above address advising him of the summary judgment dismissal procedure and the possible consequences if he failed to respond adequately. This order was returned to the court on December 7, 2009, again marked "Return to Sender, Refused, Unable to Forward" and "Not Here." A search of the South Carolina Department of Corrections database turns up no "Samuel Exens" currently in SCDC custody.

The record reveals that the plaintiff was advised in the order filed September 21, 2009, of his responsibility to notify the court *in writing* if his address changed.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution.

s/William M. Catoe
United States Magistrate Judge

December 8, 2009

Greenville, South Carolina